HSC LOGISTICS SDN BHD v. TEONG TIEK WAH

HIGH COURT MALAYA, SHAH ALAM
CHOONG YEOW CHOY JC
[ORIGINATING SUMMONS NO: BA-24NCvC-759-04-2023]
6 JUNE 2023

Abstract – *(i) When there is a valid consent judgment, the judgment creditor is entitled to enforce an undisputed debt in any manner permitted under the law. The court would not stand in the way of the judgment creditor; (ii) Section 466(1)(a) of the Companies Act 2016 does not place any limit to an amount claimed by a creditor. It only provides for a minimum threshold for an amount claimed.*

CIVIL PROCEDURE: *Injunction – Fortuna injunction – Application for – Application for Fortuna injunction to prevent judgment creditor from filing petition to wind up company – Parties had entered into consent judgment based on statutory notice pursuant to s. 466 of Companies Act 2016 – Whether Fortuna injunction ought to be granted – Whether applicant would suffer irreparable damages if Fortuna injunction is not granted – Whether there was chance of success if winding up petition is presented*

CIVIL PROCEDURE: *Judgments and orders – Consent judgment – Judgment creditor and company entered into consent judgment – Company applied for Fortuna injunction to prevent creditor from filing petition to wind up company – Whether judgment creditor entitled to enforce undisputed debt – Whether court could stand in way – Whether application for Fortuna injunction attempt to prevent legitimate creditor from exercising right to seek rightful and chosen relief from court*

COMPANY LAW: *Winding up – Statutory notice – Creditor presented company with statutory notice under s. 466 of Companies Act 2016 – Allegation that amount claimed in notice excessive – Whether s. 466(1)(a) places any limit to amount claimed by creditor*

The plaintiff sought a *Fortuna* injunction against the defendant, to prevent the latter from filing a petition to wind up the plaintiff, on the grounds that: (i) the plaintiff admitted to having received a letter and a statutory notice, pursuant to s. 466 of the Companies Act 2016 ('Act') ('s. 466 notice'), from the defendant. The plaintiff's director affirmed that the issuance of the s. 466 notice was based on a consent judgment; (ii) the amount claimed in the s. 466 notice was excessive; (iii) a consent judgment was, to all intents and purposes, akin to a contract between the parties. Thus, in the event of any 'kelalaian dan/atau pelanggaran' of the consent judgment, the defendant's claim ought to be made through a fresh civil action; (iv) the issuance and service of the s. 466 notice was made with malice and was an abuse of the

process of the court. The s. 466 notice was meant to pressure the plaintiff and to cripple the activities of the plaintiff; and (v) the initiation of winding up proceedings would result in the plaintiff facing serious legal and commercial repercussions with the consequential irreparable damage.

Held (dismissing application with costs):

(1) The issuance of the s. 466 notice by the defendant was premised on a consent judgment which required the plaintiff to pay a settlement sum of RM5,500,000 to the defendant through four post-dated cheques. A consent judgment is akin to a contract; it is an enforceable contract. Until and unless it has been set aside, it remains valid in the eyes of the law. The consent judgment was dated 20 September 2022 and, to date, over seven months had lapsed. The plaintiff failed to commence any proceedings to have the consent judgment set aside. Instead, the plaintiff failed to comply with the terms of the consent judgment. When there is a valid consent judgment, such as one in the present case, the defendant was, to all intents and purposes, a judgment creditor who was entitled to enforce an undisputed debt in any manner permitted under the law. The court would not stand in the way of the defendant. This application was clearly an attempt by the plaintiff to place another brick in the wall to prevent a legitimate creditor from exercising its right to seek a rightful and chosen relief from the court. (paras 50, 55, 56, 60 & 64)

(2) Section 466(1)(a) of the Act does not place any limit to an amount claimed by a creditor. Instead, it provides for a minimum threshold for an amount claimed. Further, there was no evidence in support of the plaintiff's contentions that the issuance and service of the s. 466 notice (i) was made with malice and was an abuse of the process of the court; and (ii) was meant as a device to pressure the plaintiff and to cripple the activities of the company. (paras 61 & 62)

Case(s) referred to:

Abdul Razak Sheikh Mahmood & Ors v. Amanah Raya Bhd & Ors And Another Appeal [2018] 5 CLJ 273 CA ***(refd)***

Charles Forte Investments Ltd v. Amanda [1964] 1 Ch 240 ***(refd)***

Fortuna Holdings Pty Ltd v. The Deputy Commissioner Of Taxation Of The Commonwealth Of Australia [1978] VR 83 ***(refd)***

Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy [2011] 1 CLJ 947 CA ***(refd)***

Re A Company [1894] 2 Ch 349 ***(refd)***

See Teow Guan & Ors v. Kian Joo Holdings Sdn Bhd & Ors [1997] 2 CLJ 299 CA ***(refd)***

Woo Koon Chee v. Scandinavian Boiler Service (Asia) Pte Ltd & Ors [2010] SGCA 35 ***(refd)***

Legislation referred to:

Companies Act 2016, ss. 190(3), 464(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (2)(c), 465(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), 466(1)(a), (b), 469

Rules of Court 2012, O. 45 r. 1(3)

For the plaintiff - Tay Yi Kuan; M/s Roshan
For the defendant - Tang Qi Wen; M/s Fahri, Azzat & Co

Reported by Najib Tamby

JUDGMENT

Choong Yeow Choy JC:

Introduction

[1] The *raison d'etre* for the granting of an injunction to restrain a presentation of a winding up petition is to prevent an abuse of the process of the court. Such an injunction is commonly referred to as a *Fortuna* injunction. The name is derived from the case of *Fortuna Holdings Pty Ltd v. The Deputy Commissioner Of Taxation Of The Commonwealth Of Australia* [1978] VR 83 ("*Fortuna Holdings*") in which the juridical basis for the relief was explicated by McGarvie J of the Supreme Court of Victoria. This case was by no means the first time that an injunction to restrain a presentation of a winding up petition had been granted.

[2] The very nature of a *Fortuna* injunction provides companies with an avenue to seek protection from the courts against vile attempts by their adversaries to present unwarranted winding up petitions with their attendant grave consequences. However, it must be remembered that not every presentation of a petition to wind up a company is without a strong legal basis. In this regard, the responsibility falls on the courts to ensure that deserving parties are rightfully granted the *Fortuna* injunction and contemptible or unworthy applications are disallowed.

The Application Before This Court

[3] The plaintiff *vide* an originating summons application filed on 28 April 2023 had sought a *Fortuna* injunction against the defendant. A certificate of urgency that accompanied the originating summons was filed on the same date.

[4] The hearing of the application took place on 5 May 2023. As the application was made by way of *inter partes*, the parties made their respective submissions before me.

[5] After hearing the arguments by the opposing parties, I dismissed the plaintiff's application with costs. The reasons for the dismissal of the application are clarified in the ensuing paragraphs.

The Basis For The Plaintiff's Application

[6] In support of its application for a *Fortuna* injunction to prevent the defendant from filing a petition to wind up the plaintiff company, the plaintiff, through an affidavit deposed by its director, put forward three reasons.

[7] First, the plaintiff admitted to having received a letter and a statutory notice pursuant to s. 466 of the Companies Act 2016 ("s. 466 notice") from the defendant's solicitors on 7 April 2023. The plaintiff's director affirmed that the basis for the issuance of the s. 466 notice was based on a consent judgment dated 16 December 2022.

[8] Second, the plaintiff further averred that the amount claimed in the s. 466 notice was excessive.

[9] Third, and more importantly, the plaintiff claimed that a consent judgment is, to all intents and purposes, akin to a contract between the parties. Thus, in the event of any "kelalaian dan/atau pelanggaran" of the consent judgment, the defendant's claim ought to be made through a fresh civil action.

[10] The plaintiff argued that the issuance and service of the s. 466 notice was made with malice and an abuse of the process of the court. The plaintiff further insisted that the s. 466 notice was meant as a device to pressure the plaintiff company and to cripple the activities of the plaintiff company. Finally, the plaintiff claimed that the initiation of winding up proceedings will result in the plaintiff company facing serious legal and commercial repercussions with the consequential irreparable damage. Reference was made to a hire purchase facility that had been granted to the plaintiff company and the effect that a winding up petition will have on that facility.

[11] At the hearing before me, counsel for the plaintiff, Mr Tay Yi Kuan, underscored several points as forming the basis of the plaintiff's application. The first was that "their application will become academic" if the *Fortuna* injunction that they sought from the court were not granted. The second argument was in relation to the nature of a consent judgment and the need by the defendant to commence a fresh civil action in the event of any breaches of the terms in the said consent judgment. Third, counsel also put forward the argument that the failure by the defendant to specify under which ground of s. 465 of the Companies Act 2016 that the defendant will be relying on for its petition to wind up the plaintiff company justified the plaintiff's application for a *Fortuna* injunction.

The Defendant's Grounds For Opposing The Application

[12] Mr Tang Qi Wen, counsel for the defendant, argued that firstly, the application by the plaintiff was an abuse of the process of the court. Learned counsel pointed out that there was an ongoing garnishee proceeding.

[13] In response to the point raised that a fresh action would have to be commenced in the event that the terms of the consent are breached, the defendant's contention was that a consent judgment is superadded with a command of the court and liable to be enforced and treated like any other judgment or court order. Counsel referred to O. 45 r. 1(3) of the Rules of

Court 2012 and the following authorities, namely, the Singapore Court of Appeal decision in *Woo Koon Chee v. Scandinavian Boiler Service (Asia) Pte Ltd & Ors* [2010] SGCA 35 ("*Woo Koon Chee*") and our Court of Appeal in *Abdul Razak Sheikh Mahmood & Ors v. Amanah Raya Bhd & Ors And Another Appeal* [2018] 5 CLJ 273; [2018] 5 MLJ 125 ("*Abdul Razak Sheikh Mahmood*").

[14] On the argument by the plaintiff alleging that the s. 466 notice was defective, the defendant's contention was that the procedural requirements under s. 466 of the Companies Act 2016 had been met and thus the point raised by the plaintiff was nothing but a frivolous objection.

[15] The defendant also pointed out that the plaintiff had waited until the evening of day 21 (after the s. 466 notice had been issued and served) to file for the *Fortuna* injunction. This fact, according to the defendant, meant that the plaintiff had ran afoul of a basic tenet that requires applications for an injunction to be made promptly. To this, the plaintiff's reply was that there is no requirement under the law for an application for a *Fortuna* injunction to be made within any given period of time.

The Legal Position

[16] The law reports are replete with cases that have dealt with applications for *Fortuna* injunctions. The origin and applicable principle for the granting of a *Fortuna* injunction have been judiciously reiterated in every case that has had to deal with such an application.

The Overriding Principle Governing The Granting Of A Fortuna Injunction

[17] For brevity, an applicant seeking a *Fortuna* injunction will succeed if the applicant is able to pivot its application on either one of two distinctive situations. These two distinguishing circumstances are often referred to as the two branches that emanate from a sole overriding principle.

[18] However, there could very well be a situation whereby both the first and second branches of the principle apply and an applicant would thus be relying on both branches of the principle. This point was alluded to by McGarvie J in *Fortuna Holdings*. The English Court of Appeal case of *Charles Forte Investments Ltd v. Amanda* [1964] 1 Ch 240; [1963] 2 All ER 940 ("*Charles Forte*") illustrates a situation where both branches of the principle apply.

The First Branch Of The Principle

[19] Under the first branch of the principle, an applicant will succeed in an application for a *Fortuna* injunction if the applicant is able to convince the court that (i) the presentation of a winding up petition against a company might produce irreparable damage to the company; and (ii) the proposed winding up petition has no chance of success.

[20] Under this first branch of the principle, both limbs in (i) and (ii) must be established.

The Second Branch Of The Principle

[21] Under the second branch of the principle, an applicant will succeed if the applicant is able to persuade the court that there is indeed a more suitable alternative procedure available to a would-be petitioner.

[22] It is vital to note that a claim or debt asserted by an intended petitioner under this second branch must be one that is disputed and the presentation of the winding up petition might result in irreparable damage to the subject company.

Analyses Of The Principle

Of Irreparable Damage

[23] Regardless of whether an applicant is relying on the first or second branch of the principle as outlined in paras. [19] to [22] above, irreparable damage will have to be established by a subject company seeking a *Fortuna* injunction.

[24] It is a given, and this has long been recognised by the courts, that the presentation of a petition to wind up a company might cause irreparable damage to a company seeking to stop a winding up petition from being presented. Instances of irreparable damage or detriment are aplenty and varied. In this regard, it would be most surprising if a company seeking a *Fortuna* injunction is not able to satisfy the court of this requirement mandated in both branches of the principle.

[25] However, it is imperative for prospective applicants seeking a *Fortuna* injunction to note that evidence of irreparable damage alone will not entitle such prospective applicants the desired order or injunction. Such is the case whether an applicant intends to rely on the first or second branch of the principle.

Suitable Alternative Procedure

[26] The question as to whether a would-be petitioner should have used a suitable alternative procedure will only arise if an applicant is basing its application on the second branch of the principle. What it simply means is that in asserting his or her or its claim, the said would-be petitioner should have, for example, (i) commenced legal proceedings in court; (ii) initiated arbitration proceedings; or (iii) invoked other dispute resolution mechanisms under the statute, such as adjudication proceedings under the Construction Industry Payment and Adjudication Act 2012, instead of filing a petition to wind up the company. (See Shamala Devi Balasundaram, *Fortuna injunctions and injunction applications under the Companies Act 2016 in Law and Practice of*

Injunctions in Malaysia (Thomson Reuters) at [9.045]. According to the learned author, what constitutes more suitable alternative procedures will depend on the nature of the disputed claim and the facts).

[27] In *Charles Forte*, the suitable alternative procedure took the form of proceedings to rectify the register. In *Fortuna Holdings*, the argument raised was that a review by the Board of Review under the Income Tax Assessment Act 1936 would be the suitable alternative procedure.

No Chance Of Success

[28] The "no chance of success" requirement becomes relevant when an application for a *Fortuna* injunction is made under the first branch of the principle. What does this requirement entail?

[29] The Companies Act 2016 makes provisions for the compulsory winding up of a company by the court. Even without a *Fortuna* injunction protection, other safeguards exist in the Companies Act 2016 to prevent abuse of the winding up process. The first measure that the Legislature has put into place under the scheme for compulsory winding up is the requirement of standing to present a winding up petition. Only the entities listed in s. 464(1)(a) to (i) are recognised as having the *locus standi* to present a petition to compulsorily wind up a company.

[30] The second layer in the overall structure to prevent abuse of the winding up process can be traced to s. 465 of the Companies Act 2016. A petitioner may only rely on any of the grounds as listed in s. 465(1)(a) to (l) of the Companies Act 2016.

[31] Even if a petitioner is able to establish standing under s. 464(1) and point to one of the grounds in s. 465(1) of the Companies Act 2016, there is no assurance that a winding up order will be granted. The court retains the discretion to refuse the granting of a winding up order. This is evident from s. 469 of the Companies Act 2016. (See also *See Teow Guan & Ors v. Kian Joo Holdings Sdn Bhd & Ors* [1997] 2 CLJ 299; [1995] 3 MLJ 598.)

[32] Despite the above protective measures against the possibility of abuse of the process by would-be petitioners, we know that there is a lapse of time between the date a petition for compulsory winding up is filed and the date of the hearing of the said petition. Abuse of the process is still a possibility. A company may suffer irreparable damage merely through public knowledge of the presentation of a petition. This is where a *Fortuna* injunction is able to protect a company from the harm intended by a would-be petitioner.

[33] Since irreparable damage is almost always a fallout as a result of the filing of a winding up petition, does this mean that a *Fortuna* injunction should be granted as a matter of course. The answer surely has to be in the negative. If *Fortuna* injunctions are granted on the basis of a potential

A detriment to a company subject to a petition for winding up, ss. 464 and 465 will be rendered dead letter law. As noted in para. [25] above, irreparable damage alone is not sufficient reason for the granting of a *Fortuna* injunction.

[34] This is where the requirement of "no chance of success" becomes imperative. If a petitioner has a chance of succeeding in his, her or its B application for the compulsory winding up of a company, the winding up process must be allowed to take its usual course under the Companies Act 2016. The process should not be hindered through the granting of a *Fortuna* injunction. To do so would be curtailing the legitimate rights of would-be petitioners. To do so would be permitting applicants for *Fortuna* injunctions C to abuse the process of the court.

[35] However, the situation is altogether different if a would-be petitioner has no chance of succeeding in a winding up petition. Under such circumstances, to permit a would-be petitioner to proceed to file a petition to wind up a company, when together with evidence that the petition will D cause irreparable damage to the company, would be to condone an abuse of the process by the would-be petitioner.

[36] For instance, if a petitioner or would-be petitioner relies or intends to rely on the ground that she is a contributory and that the company had defaulted in lodging the statutory declaration under sub-s. 190(3) of the E Companies Act 2016 (within the meaning of ss. 464(1)(c) and 465(1)(b) of the Companies Act 2016 respectively) the petition is bound to fail if, for example, the shares in respect of which the contributor was a contributory had not been held by the petitioner or would-be petitioner and registered in her name for at least six months before the presentation of the petition. Such F a situation would be similar to *Re A Company* [1894] 2 Ch 349 and the granting of a *Fortuna* injunction would be warranted.

[37] The provisions in ss. 464(1) and 465(1) of the Companies Act 2016 afford a multitude of circumstances and permutations that come into play when we consider the practice and law relating to the compulsory winding G up of companies by the court. Petitions by creditors (s. 464(1)(b) of the Companies Act 2016) on the ground that the company is unable to pay its debts (s. 465(1)(e) of the Companies Act 2016) is merely one, *albeit* the most common, of the possible scenarios for a petition to be presented to wind up a company.

H

[38] As petitions to compulsorily wind up a company by creditors on the ground that the subject company is unable to pay its debts is the prevalent circumstance and applications for *Fortuna* injunctions are predominantly to stop these creditors from presenting a petition to wind up a company, it is imperative that this aspect be scrutinised.

I

[39] The term creditor in s. 464(1)(b) of the Companies Act 2016 includes a contingent or prospective creditor of the company. This wide definition confers many would-be petitioners with the standing to present a petition. Hence the potential for abuse of the winding up process is real. In anticipation of this, the scheme under the Companies Act 2016 has made provision for another safeguard against potential exploitation of the process. Section 464(2)(c) of the Companies Act 2016 states that:

> (c) the court shall not hear the petition if presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the court;

[40] While the above added safeguard ensures that the interests of the subject company are not compromised, the harm or damage to the subject company may have already been inflicted through the publicity generated by the filing of a winding up petition. Once again, this is where a *Fortuna* injunction will come in aid of a subject company, if the conditions in either (or both) branch(es) of the principle for the granting of a *Fortuna* injunction are fulfilled.

[41] In the context of a situation where a would-be petitioner will be presenting a petition in his, her or its capacity as a creditor and the ground that the would-be petitioner will rely on is that the subject company is unable to pay its debts, the "no chance of success" element here refers to the issue of whether the debt is one that is disputed or undisputed. If the debt is undisputed, surely the would-be petitioner will succeed in the petition before the court. In such a case, the party seeking a *Fortuna* injunction will not be able to show that the would-be petitioner has no chance of success. In such a case, a *Fortuna* injunction will not be granted.

Disputed And Undisputed Debts

[42] Where a debt is not in dispute, neither the first nor the second branch of the principle governing the granting of a *Fortuna* injunction will apply.

[43] When a creditor is relying on the ground that a company is unable to pay its debts pursuant to s. 465(1)(e) of the Companies Act 2016, the issue then is whether the company is indeed unable to pay its debts. There is a statutory presumption that a company is unable to pay its debts if (i) a company is indebted in a sum exceeding RM50,000 and has been served with a notice of demand – the s. 466 notice – and the company has for 21 days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor (s. 466(1)(a) of the Companies Act 2016); or (ii) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part (s. 466(1)(b) of the Companies Act 2016); or (iii) it is proved to the satisfaction of the court that the company is unable to pay its debts.

A **The Overriding Issue Before This Court**

[44] The overriding issue in the application before me was whether the pre-conditions in the first branch of the principle governing the granting of a *Fortuna* injunction had been satisfied.

B **[45]** In deciding this issue, two subsidiary questions arose for consideration. First, if a *Fortuna* injunction were not granted, would the plaintiff suffer irreparable damage? Second, was there evidence that there was no chance of success if the defendant were to present a petition to wind up the plaintiff company. In order for the plaintiff to succeed, the answers to both of the above questions will have to be in the affirmative.

C **Application Of The Principle And The Decision Of This Court**

[46] Before me, counsel for the plaintiff raised the point that the defendant had failed to specify under which ground of s. 465 of the Companies Act 2016 that the defendant will be relying on for its petition to wind up the D plaintiff company. Accordingly, counsel for the plaintiff contended that that was reason enough for the granting of a *Fortuna* injunction.

[47] The primary purpose for the issuance and service of a s. 466 notice is to raise a statutory presumption that a company is unable to pay its debts. It is implicit that a party who has served a statutory notice under s. 466(1)(a) E of the Companies Act 2016 has the intention to rely on s. 465(1)(e) of the same Act – that a company is unable to pay its debts – as the ground in support of the party's winding up petition. On this basis, I regarded this point raised by the plaintiff as unmeritorious.

F **[48]** Counsel for the plaintiff also argued that the plaintiff company will suffer irreparable damage if the defendant were to proceed with the filing of a winding up petition. I accepted the evidence of potential detriment. However, this ground alone did not warrant the granting of the injunction sought by the plaintiff.

G **[49]** The contentious issue in this application was whether the plaintiff was able to demonstrate to the satisfaction of this court on the existence of the "no chance of success" element. In the context of the present application, the issue was whether there was a disputed debt. If the debt claimed in this case were not disputed, it cannot then be said that the defendant will have no H chance of succeeding in its impending winding up petition. On this basis, the plaintiff's application for a *Fortuna* injunction must fail.

[50] The issuance of the s. 466 notice by the defendant in this case was premised on a consent judgment dated 20 September 2022. The consent judgment required the plaintiff in the present application (together with other I defendants) to pay a settlement sum of RM5,500,000 to the defendant in this application through four post-dated cheques.

[51] If there were an admission of a debt, then the debt cannot be a disputed debt. If a creditor were to bring a claim based on that admission, we have a situation where the debt or claim is not disputed. In such a case, it would be ludicrous to suggest that a creditor has no chance of success if the creditor were to commence winding up proceedings against a debtor company. The debtor company will not be able to rely on the first nor the second branch of the principle governing the granting of a *Fortuna* injunction.

[52] At the other end of the spectrum, if a claimant merely alleges that a company is indebted to her without any evidence of an admission, the debt is a disputed debt. The claim by the (supposed) creditor is a disputed claim. In such a case, the company that has been alleged to owe the sum of money to the claimant may rely on the first branch of the *Fortuna* principle (that the impending petition by the claimant has no chance of success) or the second branch of the *Fortuna* principle (that the claimant ought to seek a suitable alternative procedure).

[53] It is granted that the present application did not fall under either of the above situations. As noted in para. [50] above, the basis for the claim by the defendant was a consent judgment.

[54] A judgment may be entered as a result of a default or with the consent of the parties. A judgment may also have been entered on merits. A judgment debt is not a disputed debt unless it has been set aside or stayed (see *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* [2011] 1 CLJ 947; [2011] 1 AMR 685; [2010] MLJU 2217).

[55] In the present application, there was a consent judgment. It is granted that a consent judgment is akin to a contract. It is an enforceable contract. Until and unless it has been set aside, it remains valid in the eyes of the law.

[56] The consent judgment in the present application was dated 20 September 2022. To date, over seven months have lapsed. The plaintiff failed to commence any proceedings to have the consent judgment set aside. Instead, the plaintiff has failed to comply with the terms of the consent judgment.

[57] The plaintiff had relied on their own "kelalaian dan/atau pelanggaran" of the consent judgment to turn the table on the defendant, by putting forward the argument that what the defendant ought to do was to make a claim through a fresh civil action.

[58] I did not find the above contention the least persuasive. The nature and effect of a consent judgment was explained by the Singapore Court of Appeal in *Woo Koon Chee* as follows:

> 14 … if the compromise agreement was incorporated as a consent judgment or order of the court …, then the party in whose favour such a judgment or order was made should be able to enforce it. It should make no difference whether a judgment or order was made by the court

A pursuant to a contested hearing or by consent of the parties. Its effect or nature would and should not change on that account. There should be no necessity to institute a fresh action to enforce the judgment or order, whether it was obtained by consent or otherwise. In this regard, we would hasten to add one rider. It does not necessarily follow that a party in whose favour a consent judgment or order was given would be precluded B from instituting a fresh action to enforce the compromise agreement.

[59] In *Abdul Razak Sheik Mahmood*, the Court of Appeal explained as follows:

[20] … The law on setting aside consent judgment is more than settled C and it is this. A consent judgment is only recorded when the respective litigants had agreed in writing as to how to resolve a legal suit. Once the consent judgment had been perfected, the parties are bound by it and the court is duty-bound to enforce the agreed terms of the same. The court also cannot vary any of the agreed terms unless with the mutual consent of the parties. Hence, one can say that the court is *functus officio* or in other D words, the court is bereft of jurisdiction to entertain any request to set aside such judgment.

[60] The upshot from the authorities cited above is that when there is a valid consent judgment, such as the one in the present case, the defendant is to all intents and purposes a judgment creditor entitled to enforce an E undisputed debt in any manner permitted under the law. The court will not stand in the way of the defendant.

[61] There was a point raised by the plaintiff to the effect that the amount claimed in the s. 466 notice was excessive. I was not quite able to follow that line of argument. Section 466(1)(a) of the Companies Act 2016 does not place F any limit to an amount claimed by a creditor. Instead, it provides for a minimum threshold for an amount claimed.

[62] On the contention by the plaintiff that the issuance and service of the s. 466 notice was made with malice, that it was an abuse of the process of the court and that it was meant as a device to pressure the plaintiff company G and to cripple the activities of the plaintiff company, I did not find any evidence in support of the above contention.

[63] While it is a legitimate right of every creditor to issue and serve a s. 466 notice, the basis upon which such a notice is served will be scrutinised H by the court. In this case, it was based on a consent judgment and the amount claimed exceeded the threshold amount. The fact that the statutory notice had the effect of "pressuring" the plaintiff company was irrelevant.

[64] This application was clearly an attempt by the plaintiff to place another brick in the wall to prevent a legitimate creditor from exercising its I right to seek a rightful and chosen relief from the court.

[65] In view of the above findings, I dismissed the plaintiff's application with costs of RM3,000.

[66] Counsel for the plaintiff made an oral application for an *Erinford* injunction to take effect until this application is disposed of by the Court of Appeal. I did not see any merit in the application for such an injunction and disallowed that application.